

Legal Texts: Linguistic Dating

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UNLIKE SCHOLARLY RESEARCH REGARDING THE linguistic dating of poetry, narrative texts, and other genres, very little research has been conducted into the linguistic dating of legal texts. In what follows, accordingly, I pave mostly new ground with the hope that this relatively short treatment may serve to stimulate further research into the topic.

Before turning to specifically Hebrew usages, I should mention the general scholarly opinion that legal writing in most languages is extremely archaic, employing usages no longer current in general speech and writing.¹ Prime English examples are two inheritances from Old English: a) the verb ‘bequeath,’ “the retention of which is due to the traditional language of wills” (*OED*, *s.v.* ‘bequeath’); and b) the word ‘let,’ with the meaning ‘impede, obstruct,’ as in the legal expression ‘without let or hindrance’ and in the tennis term ‘let ball’ (the latter in a quasi-legal context).² This issue makes it difficult to date the legal corpora in the Pentateuch, since in theory one could argue that some of the archaic language therein could still be in use even at a later period. As we shall see, however, while this may hold for some lexical items (such as the English examples ‘let’ and ‘bequeath’), in the main the linguistic profile of the legal texts in the Torah bespeaks an earlier rather than a later stratum of Hebrew.

In what follows I shall follow the consensus, which holds that Exod 21–23 is the oldest of the three legal sections of the Torah, with the two larger compositions—the legal sections of the priestly code in the books of Leviticus and Numbers, and the legal sections of the book of Deuteronomy—originating

1. Mellinkoff 1963, 12–13, 304–25; see also Tiersma 2008.

2. Today the word constitutes a contranym with ‘let’ meaning ‘allow, permit,’ but the two words have different etymologies, per their Old and Middle English usages and pronunciations.

at a somewhat later date. Note that I do not attempt to assign priority to either the priestly material or the Deuteronomic laws, vis-à-vis the other (as most scholars do), but rather am content to recognize them as two coeval yet different approaches to law, cult, calendar, and the like in ancient Israel.³ In addition, there are selected smaller units of legal material, most importantly the Decalogue (Exod 20, Deut 5), though also Exod 34.

The first feature to consider is the use of paragogic *nun*. While scholars continue to debate the use and purpose of paragogic *nun* in Biblical Hebrew (BH), there is a general consensus that the form is employed more frequently in earlier texts and in compositions which archaize,⁴ as opposed to later texts. Thus, for example, of the 304 instances of this feature in the Bible, 106 appear in the Torah (albeit not evenly distributed, to wit, there are 56 in Deuteronomy and none in Leviticus); 5 appear in Ruth, all placed in the mouth of Boaz or Naomi as representatives of the older generation, using more archaic speech;⁵ and only 2 appear in the nonsynoptic portions of Chronicles, while there are none in Daniel, Esther, and Ezra–Nehemiah.

When we turn to the legal texts of the Torah, we find a steady use of the paragogic *nun*, as follows, from the legal corpora in Exodus and Deuteronomy (note the ending *-un* instead of standard *-u* in the transliterated forms within parentheses):⁶

Exod 20:23, 21:35, 22:21, 24, 30 (2x), 34:13 (3x)

- 20:23 לֹא תַעֲשֶׂן אִתִּי ‘You shall not make (*ta’asun*) with me’ (idols)
- 21:35 וְגַם אֶת־הַמֶּת יַחֲצִיזוּ ‘And the dead (ox/bull) they shall divide (*yeḥeṣun*)’
- 22:21 כָּל־אַלְמָנָה וְיָתוֹם לֹא תַעֲנֹן ‘Every widow and orphan you shall not oppress (*tə’annun*)’
- 22:24 לֹא־תִשְׂמוֹן עָלָיו נֶשֶׁךְ ‘You shall not place (*təsimun*) upon him interest’
- 22:30 וְאַנְשֵׁי־קֹדֶשׁ תִּהְיוּ לִי ‘And holy people you shall be (*tihyun*) unto me’
- 22:30 לְכֹלֵב תִּשְׁלִיכֶנּוּ אֹתוֹ ‘To the dog you shall cast (*tašlikun*) it’
- 34:13 כִּי אֶת־מִזְבְּחֵיהֶם תִּתְּצוּן ‘For their altars you shall demolish (*tittoṣun*)’

3. If the analogy helps, note that in the late Second Temple period, the Pharisee and Sadducee approaches coexisted (not to mention the Qumran/Essene approach embodied in compositions such as MMT and the Temple Scroll), with no scholar attempting to date one earlier than the other(s).

4. Holmstedt 2010, 120.

5. Holmstedt 2010, 49.

6. I continue the practice of transliterating the key grammatical forms below.

- 34:13 וְאֶת־מַצְבֵּרֵיכֶם תִּשְׁבְּרוּ 'And their pillars you shall smash (*təšabberun*)'
- 34:13 וְאֶת־אֲשֵׁרֵיכֶם תִּכְרֹטוּ 'And their sacred-posts you shall cut-down (*tikrotun*)'

Deut 12:2, 3 (2x), 4, 8; 13:5; 17:13, 16; 18:1, 15

- 12:2 אַבְדָּ תַאבְדֹּון אֶת־כָּל־הַמִּקְדָּשִׁים 'You shall indeed destroy (*tə'abbadun*) all the places'
- 12:3 וְאֲשֵׁרֵיהֶם תִּשְׂרֹפוּן בָּאֵשׁ 'And their sacred-posts you shall burn (*tišrapun*) in fire'
- 12:3 וּפְסִלֵי אֱלֹהֵיהֶם תִּגְדְּעוּן 'And the graven-images of their gods you shall hew-down (*tagadde'un*)'
- 12:4 לֹא־תַעֲשֶׂון כֵּן 'You shall not do (*ta'ašun*) thus'
- 12:8 לֹא תַעֲשֶׂון כְּכָל אֲשֶׁר אַנְחֶנוּ עֹשִׂים 'You shall not do (*ta'ašun*) as all that we are doing'
- 13:5 וְאֹתוֹ תַעֲבֹדוּ וּבּוֹ תִדְבָּקוּן 'And him you shall worship, and to him you shall cleave (*tidbaqun*)'
- 17:13 וְלֹא יִזְדֹּון עוֹד 'And you shall not be insolent (*yəzidun*) any more'
- 17:16 וְלֹא תִסְפֹּון לָשׁוּב בַּדֶּרֶךְ הַזֶּה עוֹד 'And you shall not continue (*tosipun*) to return on this path again'
- 18:1 אֲשֵׁי יְהוָה וְנַחֲלָתוֹ יֹאכְלוּן 'The offerings of YHWH and his inheritance they shall eat (*yo'kelun*)'
- 18:15 אֲלֵיוֹ תִשְׁמָעוּן 'To him you shall listen (*tišma'un*)'

Such a concentration of attestations of the paragogic *nun* implies an earlier rather than later date for the composition and/or compilation of the pentateuchal laws.

The next feature to consider is the use of the infinitive absolute (inf. abs.) as an imperative, as seen most famously in the Decalogue (see passages below). As is well known, the inf. abs. generally is used less frequently in late books,⁷ and thus one also observes a reduction in the inf. abs. serving as the imperative. A number of the specific commands in the pentateuchal corpora are expressed via this usage, thereby suggesting an earlier rather than a later date.⁸ Note the following:

- Exod 20:8 זָכוֹר אֶת־יְוֹם הַשַּׁבָּת 'Remember (*zakor*) the Sabbath day' (see also Deut 5:12)
- Exod 20:12 כְּבֹד אֶת־אָבִיךָ וְאֶת־אִמְךָ 'Honor (*kabbed*) your father and your mother' (see also Deut 5:16)

7. See, e.g., Kutscher 1982, 82.

8. Hendel and Joosten 2018, 38.

- Deut 16:1 שְׁמוֹר אֶת־חֹדֶשׁ הָאָבִיב ‘Observe (*šamor*) the month of Aviv’
- Deut 24:9 זָכוֹר אֶת אֲשֶׁר־עָשָׂה יְהוָה אֱלֹהֶיךָ לְמִרְיָם ‘Remember (*zakor*) what YHWH your God did to Miriam’
- Deut 25:17 זָכוֹר אֶת אֲשֶׁר־עָשָׂה לְךָ עַמְלֵק ‘Remember (*zakor*) what Amaleq did to you’

Recall that there are only about 60 instances of the use of inf. abs. as the imperative throughout the entire Bible.⁹ Therefore, encountering seven of them within the legal texts of the Torah is statistically significant.

For our third illustration, we turn to the use of the *qal* passive (that is, the internal passive of the *qal* stem, even though the Masorah typically presents these verbs as *pu'al* and *hoph'al* forms). This feature harks back to Ugaritic,¹⁰ and it must have been part of earlier BH, though in time the usage died out, so that the *niph'al* came to be used more and more to express the passive of the *qal*. Several such forms occur in the Torah legal corpora, once again indicating an early date of composition. Two examples follow:

- Exod 22:6 וְגָנַב מִבֵּית הָאִישׁ ‘And it is stolen (*wagunnab*) from the house of the man’; note that the Samaritan Pentateuch reads וְגָנַב¹¹
- Num 26:54 אִישׁ לְפִי פְקֻדָּיו יִתֵּן נַחֲלָתוֹ ‘Each is to be given (*yuttan*) its inheritance according to its accounting’¹²

Next we turn to the two ways of saying ‘take a woman’ (i.e., ‘marry’) in BH. In earlier texts one finds ל-ק-ח *l-q-h* + אָשָׁה *išša* (e.g., Gen 25:1), while in later texts one finds n-š-ʾ *n-š-ʾ* + אָשָׁה *išša* (e.g., 2 Chr 11:21). The best way to see the difference between the two uses is to align the following two sets of mostly parallel passages (Hurvitz 2014, 185):

- Gen 4:19 וַיִּקַּח־לּוֹ לָמֶד שְׁתֵּי נָשִׁים ‘And Lamech took (*wayyiqqah*) for himself two wives’
- 2 Chr 24:3 וַיִּשְׂא־לּוֹ יְהוֹיָדָע נָשִׁים שְׁתֵּים ‘And Jehoiada took (*wayyišša*) for himself two wives’
- Gen 34:9 וְאֶת־בָּנֵינוּ תִקַּחוּ לָכֶם ‘And our daughters take (*tiqḥu*) for yourselves’
- Ezra 9:12 וּבְנֵיהֶם אֲלִי־תִשְׂאוּ לְבָנֵיכֶם ‘And their daughters do not take (*tis'u*) for your sons’

9. Young, Rezetko, and Ehrensverd 2008, 2.130–31.

10. Sivan 2001, 126–28.

11. Hendel and Joosten 2018, 55.

12. Hendel and Joosten 2018, 17.

In the two Genesis passages one finds the verb $ל-ק-ח$ *l-q-h*, while in the two Persian-period passages one finds the verb $נ-ש-א$ *n-š-ʿ*.

Naturally, marriage is a topic that arises within various contexts in pentateuchal law, and thus we may point to a number of passages, *all* of which use the earlier phraseology:

- Lev 18:17 $וְאֶת-בִּתְּךָ וְאֶת-בִּתְּהָאֵת$ 'The daughter of her son and the daughter of her daughter you shall not take (*tiqqah*)'
- Lev 18:18 $וְאִשָּׁה וְאֶל-אֲחֹתָהּ$ 'And a woman and her sister you shall not take (*tiqqah*)'
- Lev 20:14 $וְאִישׁ אֲשֶׁר יִקַּח אֶת-אִשְׁתּוֹ וְאֶת-אִמָּהּ$ 'And a man who takes (*yiqqah*) a woman and her mother, this is depravity' (see also v. 21)
- Lev 21:7 $וְאִשָּׁה זֹנָה וְחִלְלָה לֹא יִקְחוּ וְאִשָּׁה גְרוּשָׁה מֵאִשְׁתּוֹ$ 'A harlot woman or one defiled they shall not take (*yiqqahu*), and a woman divorced from her husband they shall not take (*yiqqahu*)' (see also vv. 13–14)
- Deut 20:7 $וּמִי־הָאִישׁ אֲשֶׁר-אָרַשׁ אִשָּׁה וְלֹא לָקַחָהּ$ 'And whichever man who has betrothed a wife, and who has not taken her (*laqaḥah*)'
- Deut 21:11 $וְחָשַׁקְתָּ בָּהּ וְלָקַחְתָּ לָּךְ$ 'And you desire her, and you would take (*wəlaqaḥta*) (her) for yourself as a wife'
- Deut 22:13 $כִּי-יִיקַח אִישׁ אִשָּׁה$ 'When a man takes (*yiqqah*) a woman' (see also v. 14)
- Deut 23:1 $לֹא-יִיקַח אִישׁ אֶת-אִשְׁתּוֹ אָבִיו$ 'A man shall not take (*yiqqah*) the wife of his father'
- Deut 24:1 $כִּי-יִיקַח אִישׁ אִשָּׁה וּבָעֻלָּהּ$ 'When a man takes (*yiqqah*) a wife and marries her' (see also vv. 3–5)
- Deut 25:5 $וְלָקַחָהּ לָוִי לְאִשָּׁה וַיַּבְמָהּ$ 'And he shall take her (*ulaqaḥah*) for himself as a wife, and he shall perform the levirate duty'

In sum, on seventeen occasions, the Torah uses the classical formulation to express marriage, as one further indication of the relative earliness of the legal corpora.

As indicated via the examples of English 'let' and 'bequeath' (see above), lexical items may be retained as archaisms within legal writing in various language traditions. Thus, even if by themselves they may not prove the relative antiquity of the pentateuchal legal corpora, two examples are worth including here.

The term $שָׂר$ *š'er* 'flesh, kinsman' occurs eight times in the Torah's legal texts, but nowhere else in the biblical prose corpus (and in fact not commonly

in poetry either): Exod 21:10; Lev 18:6, 12–13; 20:19; 21:2; 25:49, Num 27:11. One must assume that the noun is an archaic lexeme, which simply died out in everyday usage, replaced by more common words such as אח *ah* ‘brother, kinsman,’ and בָּשָׂר *bašar* ‘flesh.’¹³

In similar fashion, the term עֵמִית *‘amit* ‘friend’ occurs eleven times in the pentateuchal legal corpora, though nowhere else in prose texts: Lev 5:21 (2x);¹⁴ 18:20; 19:11, 15, 17; 24:19; 25:14 (2x), 15, 17.¹⁵ One should conclude that עֵמִית *‘amit* ‘friend’ derives from the realm of law, but was not used in ordinary parlance, where synonyms such as רֵעַ *rea* and חֵבֵר *haber* were standard (especially the former).¹⁶

At the outset, I observed that Exod 21–23 (the so-called Covenant Code) is the oldest of the three main legal corpora. This will explain the use of some very unusual language in these three chapters. Note the following:

- Exod 21:3 יָצָא בִּגְפוֹ יָבֵא בִּגְפוֹ ‘If he came single, he shall leave single’ (see also v. 4)—with the otherwise unattested word גַּפ *gap* whose meaning can be determined only by the context.
- Exod 21:10 וְעֵנֶתָהּ לֹא יִגְרַע ‘Her food, her clothing, and her oil (?) he shall not diminish’—a passage that evokes Mesopotamian legal formulations.¹⁷
- Exod 21:13 וְהָאֱלֹהִים אֲנִי לֵידּוֹ ‘And God let it happen to his hand’—the only such use of the verb אֶנֶּה *’n-h* ‘let happen’ in the prose corpus.
- Exod 21:14 מִמֶּנּוּ מִזְבְּחוֹי תִקְחוּנוֹ לָמוֹת ‘From my altar you shall take him to die’—an action presumably related to the cities of refuge, even though the latter are not even hinted at here.
- Exod 21:22 וְנָתַן בְּפָלְלִים ‘And he shall pay by the reckoning (?)’—with the rare word פָּלְלִים *pālilim* (elsewhere Deut 32:31, Job 31:11).
- Exod 21:25 כְּוִיָּה תַחַת כְּוִיָּה ‘burn for burn’—only here in the entire Bible.
- Exod 22:8 דְּבַר־פֶּשַׁע ‘matter of wrongdoing’—only here in the entire Bible.
- Exod 22:8 אִשֶּׁר יִרְשִׁיעוּן אֱלֹהִים יִשְׁלֶם שְׁנַיִם לְרֵעֵהוּ ‘The one whom the gods deem-guilty, he shall pay double to his fellow’—note the plural verb, thus the plural subject ‘gods,’ for which see below.

13. Hurvitz 1982, 71–74.

14. Technically, this passage falls within the cultic corpus, but note that the context is torts and damages.

15. In fact, the word occurs only once more, in a prophetic text, Zech 13:7.

16. Hurvitz 1982, 74–78.

17. Paul 1969.

- Exod 23:5 עָזַב תַּעֲזֹב עִמּוֹ ‘You indeed shall restore (it) with him’—with the verb derived from the Semitic root ‘-*d-b* ‘set, restore’ (cf. Ugaritic ‘-*d-b*).¹⁸

To be sure, atypical language does not automatically translate to early language, but when one sees a concentration of such usages within a prescribed set of chapters, one may reasonably conclude that taken as a whole these linguistic features point to an early date of composition or compilation. In support of this conclusion are some of the data presented above, e.g., the use of the *qal* passive at Exod 22:6 and the five instances of paragogic *nun* in the Covenant Code. Moreover, note the word שָׁר *šar* in Exod 21:10, discussed above, though instead of its usual meaning of ‘flesh, kinsman,’ it appears to have a more generalized meaning of ‘food’ here.

Of all the passages listed above, the one which deserves further analysis is Exod 22:8 אֲשֶׁר יִרְשִׁיעַן אֱלֹהִים יִשְׁלֹם שְׁנַיִם לִרְעֵהוּ ‘The one whom the gods deem-guilty, he shall pay double to his fellow.’ The third-person masculine plural verb יִרְשִׁיעַן *yarši’un* ‘deem-guilty’ indicates that the subject אֱלֹהִים *’elohim* cannot be singular ‘God,’ but rather must be plural ‘gods,’ harking back to an earlier usage, not purged from the biblical text.¹⁹

One also suspects that the word הָאֱלֹהִים *ha-’elohim* in Exod 21:6; 22:7 refers to the plural gods. For the former, note that the parallel law of the slave in Deut 15:17 omits the relevant clause, suggesting that the author of the later Deuteronomic code understood the original meaning of the Exod 21:6 usage. For the latter, note that in legal texts from Nuzi, individuals must swear or depose before the gods (Akkadian *ilâni*), thus illuminating the Hebrew phrase וְנִקְרַב בְּעַל-הַבַּיִת אֶל-הָאֱלֹהִים ‘and the owner of the house shall approach the gods.’²⁰

The linguistic evidence presented herein points to the relatively early composition of the various pentateuchal legal corpora, especially the Covenant Code. Until now I have not proposed an absolute date but merely have spoken generally about the early date of this material. Can we be more precise?

The answer is yes, though one needs to incorporate into the discussion some nonlinguistic material. I begin by quoting Jeffrey Tigay, *in extensio*, regarding the legal section at the core of the book of Deuteronomy:

18. This case is not as straightforward as the others, due to the only other attestation of this root in BH, quite surprisingly in Neh 3:8 הָרִחְבָּה יְרוּשָׁלַם עַד הַחוֹמָה הָרִחְבָּה ‘and they restored (*wayya’azbu*) Jerusalem, until the broad wall’.

19. Compare, perhaps, the (mainly British) English term ‘the gods’ to refer to the highest seating area in a theater.

20. Gordon 1935.

The society reflected in Deuteronomy's laws is a good deal less advanced than that of seventh century Judah. It consists primarily of farmers and herders. There are no laws about merchants, artisans, professional soldiers, or other professionals. There are none dealing with commerce, real estate, or written contracts, and none dealing with commercial loans. . . . There is no mention of royal officials or the royal power to tax and confiscate property and draft citizens. The monarchy itself is mentioned only once, as an optional figurehead institution that has no authority or role in society.²¹

In sum, per the same author, "The society they reflect is essentially the period of the Chieftains ("Judges")."²²

This is equally true of texts emanating from the priestly circle, which knows of a tabernacle, but not of the later temple, and which recognizes the *נְשִׂאִים*, lit. 'elevated-ones,' as the leaders of the community, including in legal settings (see Num 27:2; 36:1, etc.),²³ while offering no comment about a king.

These two main sources, accordingly, must have reached their more or less final form before the great changes that occurred in the tenth century, with the rise of the monarchy and the construction of the temple. The law of the king in Deut 17:14–20 is clearly a reaction to the excesses of Solomon (see esp. vv. 16–17, regarding the multiplication of wives, the amassing of silver and gold, and the horse trade with Egypt—three items mentioned in 1 Kgs 10:21–23, 28–29, 11:1–3) and must date to the tenth century BCE.²⁴ If the law is original to its context, then we have a fixed date for the book of Deuteronomy; if the law is an addendum, appended to the pericope in 16:18–17:13, which deals with various positions of authority (judges, officers, priests, et al.), then the core of Deuteronomy must be older.

Furthermore, as we saw above, the Covenant Code is linguistically older than the two larger legal sections of the Torah, so that Exod 21–23 would clearly date to the premonarchic period.

21. Tigay 1996, xxi.

22. Tigay 1996, xxii.

23. The term hardly appears in texts from the monarchic, exilic, and postexilic periods, with the exception of Ezekiel, who clearly evokes the language of the Torah, especially the priestly material.

24. For an American analogy, compare the 22nd Amendment to the United States Constitution, enacted in the years 1947–1951, limiting the presidency to two terms, as a legislative reaction to the four terms served by President Franklin D. Roosevelt (1933–1945).

In sum, from both the linguistic and contextual perspectives, the legal texts of the Torah must be seen as products of early Israel, before the later institutions of monarchy, temple, officialdom, commercialism, and so forth took hold, thereby transforming Israelite society from the tenth century onward.

RETHINKING THE COMPOSITION OF THE PENTATEUCH

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